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Issue Date: 19 August 2004

Case No.: 2004-LHC-550

OWCP No.: 05-111959

In the Matter of:

ROBERT THOMPSON,
Claimant,

v.

NEWPORT NEWS SHIPBUILDING
AND DRY DOCK COMPANY,
Employer.

Appearances:

Charlene Parker Brown, Esq.
For Claimant

Benjamin M. Mason, Esq.
For Employer

Before:
LARRY W. PRICE
Administrative Law Judge

DECISION AND ORDER

This proceedings arises from a claim by Robert Thompson ("Claimant") for permanent total disability compensation under the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. § 901 *et seq*. ("the Act"). Claimant alleges that he is permanently and totally disabled due to a work-related injury to his right knee which occurred on June 11, 2001, while he was employed by Newport News Shipbuilding and Dry Dock Company ("Employer" or "the shipyard"). Employer argues that suitable alternative employment is available to Claimant, and, thus, he is limited to an award of permanent partial disability compensation.

A formal hearing was held in this case on May 3, 2004 in Newport News, Virginia. Claimant submitted eight exhibits, identified as CX 1 through CX 8, which were admitted into evidence without objection. Employer submitted nine exhibits, identified

as EX 1 through EX 9, which were admitted without objection. Joint stipulations were submitted as JE 1. Simultaneous briefs were due on July 3, 2004. The deadline for filing briefs was extended to July 7, 2004. Both parties submitted briefs and the record was closed on July 7, 2004.

The findings and conclusions which follow are based on a complete review of the record in light of the arguments of the parties, applicable statutory provisions, regulations, and pertinent precedent.

ISSUES

1. Is Claimant permanently totally disabled?

2. If Claimant is not totally disabled, what is the extent of Claimant's partial disability?

STIPULATIONS

The parties have stipulated, and I find that:

1. An employer / employee relationship existed between Employer and Claimant at all relevant times;

2. The parties are covered by the Act;

3. Claimant suffered an injury to his right knee on July 11, 2001;

4. Claimant gave timely notice of injury to Employer;

5. Claimant filed a timely claim for compensation;

6. Employer filed a timely First Report of Injury and a timely Notice of Controversion;

7. Claimant's average weekly wage at the time of injury was $803.31, which results in a compensation rate of $535.54;

8. Employer paid Claimant temporary total disability benefits from July 12, 2001 through September 14, 2003;

9. Claimant's treating physician is Dr. Thomas Stiles; and

10. Claimant is unable to return to his pre-injury shipyard employment.

(JE 1).

DISCUSSION OF LAW AND FACTS

I. Summary of the evidence

A. Testimony of Robert Thompson

Robert Thompson ("Claimant") lives in Winton, North Carolina (Tr. 9). He worked as a sheet metal mechanic at the shipyard. As a sheet metal mechanic, Claimant worked on air-conditioning units, foundations, bulkheads, and ventilation systems (Tr. 10). When he was injured in July 2001, Claimant was working onboard a ship (Tr. 10). While doing so he injured his right knee (Tr. 11). Claimant sought treatment for the injury, first from Dr. Tornberg and later from Dr. Stiles (Tr. 12). Dr. Stiles twice operated on Claimant's knee (Tr. 30). Dr. Stiles issued to Claimant a set of work restrictions that included "no squatting, no kneeling, no bending, and no long walking or standing, and no climbing" (Tr. 13). The shipyard had no work available for Claimant within those restrictions (Tr. 13). After leaving the shipyard, Claimant received job listings from Employer (Tr. 13-14). He applied for the listed jobs which were within his driving range, but he was not hired by any of the potential employers (Tr. 14). Claimant explained that his "driving range" is the limited driving distance imposed on him by Dr. Stiles. Claimant is taking the medication Darvocet, and Dr. Stiles limited Claimant's driving as a result (Tr. 15).

Claimant applied for the jobs sent to him by Rebecca Seaford, Employer's representative, but none of the potential employers offered him a job. According to Claimant, he applied for the cashier position at the Duck Thru Mini Mart but was not hired because of his restrictions (Tr. 16-17). He applied to the Dollar General store but was not hired because the employer was hiring for a stocker position (Tr. 17-18). Claimant was rejected by Family Foods of Gatesville and the Red Apple store because of his physical restrictions (Tr. 18-20). Claimant applied twice with Advance Auto Parts, but was told that the store was not hiring (Tr. 21).

Claimant applied for the unarmed security guard position with the Alpha Group, Inc. in Norfolk, Virginia, but he fell asleep while driving to the job site (Tr. 15, 22). He was not hired for the position, and his difficulty staying awake during the drive prompted Claimant to talk to Dr. Stiles about restrictions on his driving (Tr. 22).

Claimant did not apply at the George Seamour factory in Edenton, North Carolina because he believed the location to be outside his driving range (Tr. 21). Seaford instructed Claimant to disregard that job lead as well as the job leads for the Wrangler factory and Edenton Dying & Finishing (Tr. 21-2).

Although Claimant only applied to jobs sent to him by Employer he testified that looked for other jobs in the area (Tr. 22-23, 25). Many of the locally available jobs were truck driving jobs which he did not believe he could perform. (Tr. 23).

B. Testimony of Francis Charles DeMark

Charles DeMark is a rehabilitation counselor with Coastal Vocational Services in Portsmouth, Virginia (Tr. 42). He has a master's degree in rehabilitation counseling and is a certified rehabilitation counselor through the National Commission on Rehabilitation Counselors certification program. He is certified by the U.S. Department of Labor's Office of Workers' Compensation. He is also certified as rehabilitation counselor in Virginia and North Carolina. (Tr. 43).

DeMark was hired by Claimant to review Employer's labor market survey and to assess Claimant's potential employment opportunities. DeMark reviewed Claimant's medical records. He also met with Claimant and administered a battery of vocational tests.[1] DeMark performed an analysis of Claimant's vocational history and analyzed the labor market survey (Tr. 43-4).

Based on this review, DeMark opined that Claimant's background as a sheet-metal worker would place him in the category of "semi-skilled" workers (Tr. 43). Many of Claimant's metal working skills are transferable (Tr. 44). However, those skills go along with the ability to do manual labor, which was compromised by Claimant's work injury (Tr. 45). Because his restrictions limit him to sedentary work, Claimant's transferable skills have been compromised (Tr. 45). In addition, DeMark opined that Claimant's age, 57 years old, and his location in rural North Carolina affect the availability of jobs. DeMark acknowledged that most of the jobs listed in the labor market survey are minimum wage jobs which require no specific skills and little, if any, experience (Tr. 67).

According to DeMark, only sedentary jobs are appropriate for Claimant (Tr. 48-9). DeMark opined that the cashier jobs listed in the labor market survey should be considered light duty jobs (Tr. 49). Thus, no cashier jobs are appropriate employment for Claimant. Furthermore, DeMark explained that cashier positions are not suitable because Claimant has no experience as a cashier (Tr. 49).[2]

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[1] Vocational testing revealed that Claimant is of average intelligence. He reads at an 11th -12th grade level, spells at a 7th grade level and has 6th grade level math skills (Tr. 46-7).

[2] However, DeMark offered that some jobs which are listed as "light duty" in the Dictionary of Occupational Titles might actually be described as sedentary (Tr. 61-2). This is even more likely if potential employers are willing to make accommodations for an employee's physical restrictions (Tr. 62).

In DeMark's opinion, none of the jobs listed in the labor market survey are appropriate for Claimant. He explained that the lifting requirements for the Dollar Tree cashier job are outside of Claimant's restrictions (Tr. 50). He does not believe that the cashier job with Family Foods of Gatesville is suitable, but he did not explain why (Tr. 50). He opined that the cashier job at Red Apple was not suitable because of Claimant's lack of experience and because of intense competition from other job seekers (Tr. 51). De Mark did not find the counter-person position at Advance Auto Parts to be appropriate either. DeMark opined that the job should be considered medium work because the employee would have to lift things such as cases of oil, car batteries and other automobile parts that weigh more than 30 pounds (Tr. 51-2).

DeMark explained that the factory worker job at George Seamour was not appropriate. He acknowledged that he had never visited the factory and that he was not familiar with the employer. However, DeMark opined that, based on the description of job duties for "factory worker" in the Dictionary of Occupational Titles, the job was not suitable for Claimant. Furthermore, he did not believe that the job was available to Claimant due to his lack of factory worker experience and because such jobs are generally reserved for women. DeMark was also of the opinion that Claimant's poor hand dexterity would be an issue with this job and with any factory worker / sewing jobs listed in the labor market survey (Tr. 52). Finally, DeMark stated that there is keen competition for factory jobs in North Carolina because of outsourcing to oversees markets and, as a result of this competition, Claimant does not have a reasonable chance of being hired for any factory worker job.

Considering only Claimant's physical restrictions, DeMark did not believe that any of the jobs listed in Employer's labor market survey are appropriate (Tr. 64). Claimant is limited to sedentary work, and DeMark considered all of the listed jobs as light-duty. (Tr. 64). DeMark did not disagree with Dr. Stiles' opinion that eight of the listed jobs were appropriate (Tr. 64). However, he explained that he does not believe that the job descriptions sent to and signed by Dr. Stiles were accurate (Tr. 65).

C. Testimony of Barbara J. Harvey

Barbara Harvey, a certified vocational rehabilitation specialist, was previously employed by GENEX Services, Inc. of Newport News, Virginia (Tr. 72). She was a job-start facilitator and vocational supervisor. She supervised the job-start program, including supervising four one-on-one vocational case managers and a staff of seven job-placement specialists (Tr. 73). The participants in the job-start program are primarily shipyard employees who have been referred to GENEX by Employer (Tr. 73).

Harvey was hired by Employer to complete a labor market survey in this case. Harvey tested Claimant's vocational aptitude, trained Claimant in job-seeking, and provided him with job leads (Tr. 78-9). None of the employers to which Harvey sent Claimant offered him a job (Tr. 80). Although Claimant testified that he applied to every position listed in the labor market survey, Harvey produced a signed document which stated that Claimant did not apply for the job at the Dollar General store (Tr. 83-4).

Harvey sent nine job descriptions to Dr. Stiles in October 2003. Dr. Stiles approved 8 of the jobs, with the additional restriction that Claimant's work must be limited to 1-2 hours of standing per day. (Tr. 108). He did not approve the security guard job with the Alpha Group.

D. Physical Restrictions Form signed by Dr. Thomas Stiles on September 17, 2003

Claimant's permanent restrictions, set out in EX 5, do not limit lifting, twisting or bending (EX 5). However, Claimant is restricted to no climbing of ladders, climbing stairs only to and from job; no crawling, kneeling, or squatting (*Id*.). The restrictions permit standing "frequently" for up to 2.5 – 5 hours (*Id*.).

E. Labor Market Survey

Below in chart form is a summary of the labor market survey conducted by Barbara Harvey (CX 7):

Employer & Location	Position	Date Contacted	Salary	Qualifications	Hiring?	Approved by Dr. Stiles?
Duck Thru Mini Mart, Winston, NC	Cashier	09/03/2003	$5.15 + per hour, depending on experience	Will train; negligible lifting	Hired in July and August 2003	Yes, with minimal standing, 1- 2 hours per day
Dollar General, Ahoskie, NC	Cashier / Sales Associate	09/02/2003	$5.15 + per hour, depending on experience	Will train; Manager willing to accommodate lifting restrictions	Hired in July and August 2003	Yes, with minimal standing, 1- 2 hours per day
Family Foods of Gatesville, Gatesville, NC	Cashier	09/03/2003	$5.15 + per hour, depending on experience	Will train; lifting is negligible	Hired in July and August 2003	Yes, with minimal standing, 1- 2 hours per day
Beasley Enterprises (Red Apple), Ahoskie, NC	Cashier	09/02/2003	$5.15 + per hour, depending on experience	Basic math ability; will train; lifting 10-15 pounds occasionally	Hired in July and August 2003; hires often	Yes, with minimal standing, 1- 2 hours per day
Advance Auto Parts, Ahoskie, NC	Counter Person	09/03/2003	$6.50 per hour	Will train; no lifting	Hired in July and August 2003	Yes, with minimal standing, 1- 2 hours per day
George Seamour, Edenton, NC	Factory Worker	09/03/2003	$6.64 per hour	None; will train	Hired in July and August 2003	Yes, with minimal standing, 1- 2 hours per day
Edenton	Draw In /	09/03/2003	$6.50 per	None; will	Hired in July	Yes, with

Dying & Finishing, Edenton, NC	Wrap Ends		hour	train; no lifting	and August 2003	minimal standing, 1- 2 hours per day
Wrangler, Windsor, NC	Sewing Machine Operator	09/03/2003	$6.25 per hour	None; will train; negligible lifting	Hired in July 2003	Yes, with minimal standing, 1- 2 hours per day
The Alpha Group, Inc., Ahoskie, NC	Unarmed Security Guard	09/03/2003	$5.50 per hour	Able to read and write; Acceptable background check; valid driver's license; will train; negligible lifting	Hiring in September 2003	Not approved by Dr. Stiles

II. Is Claimant permanently totally disabled?

A worker entitled to permanent partial disability for an injury arising under the schedule may be entitled to greater compensation under sections 8(a) and (b) by a showing that he is totally disabled. *Potomac Electric Power Co. v. Director*, 449 U.S. 268, 277 n.17 (1980); *Davenport v. Daytona Marine & Boat Works*, 16 BRBS 1969, 199 (1984). However, unless the worker is totally disabled, he is limited to the compensation provided by the appropriate schedule provision. *Winston v. Ingalls Shipbuilding, Inc*., 16 BRBS 168, 172 (1984).

Claimant has alleged that as a result of his work-related injury he is permanently totally disabled.[3] To establish that he is totally disabled, Claimant must demonstrate that because of the effects of his work-related injury he has no residual wage-earning capacity. Initially, Claimant must make a *prima facie* showing that he cannot return to his pre-injury employment. *See Universal Maritime Corp. v. Moore*, 126 F.3d 256, 264 (4th Cir. 1997). Should Claimant make this showing, the burden shift to Employer to rebut the finding of disability by establishing that suitable alternative employment exists which Claimant is capable of performing. *See Brooks v. Director, OWCP*, 2 F.3d 64, 65 (4th Cir. 1993) (per curiam). If Employer establishes that suitable alternative employment exists, Claimant may nevertheless demonstrate that he is totally disabled is he proves that he reasonably and diligently sought employment but was unable to secure a job. *See Newport News Shipbuilding & Dry Dock Co. v. Tann*, 841 F.2d 540, 542 (4th Cir. 1988). If Claimant cannot establish that he is totally disabled, he is limited to an award for permanent partial disability under section 8(c)(2) of the Act.

[3] The parties do not dispute that Claimant's injury is permanent as of September 14, 2003. I so find.

A. Claimant's *prima facie* showing of total disability

Once a claimant has established that he cannot return to his pre-injury employment, a *prima facie* showing of disability is made. The burden then shifts to the employer to demonstrate that suitable alternative employment exists, such that the claimant retains some residual wage-earning capacity.

The parties have stipulated that Claimant cannot return to his pre-injury employment (JE 1 at Stipulation 10). Thus, I find that he has established a *prima facie* case of total disability under the Act.

B. Employer's burden to establish the existence of suitable alternative employment

Once a claimant makes a *prima facie* showing of total disability, the burden of production shifts to the employer to establish the existence of suitable alternative employment for which the claimant could realistically compete if he diligently tried. *Tann*, 841 F.2d at 542 (citing *Trans-State Dredging v. Benefits Review Bd.*, 731 F.2d 199, 200 (4th Cir. 1984); *Newport News Shipbuilding & Dry Dock Co. v. Director, OWCP*, 592 F.2d 762, 765 (4th Cir. 1979)). An employer can establish suitable alternative employment by showing the existence of realistic job opportunities in the claimant's geographic area which the claimant is capable of performing, considering his age, education, work experience, and physical restrictions. *New Orleans (Gulfwide) Stevedores v. Turner*, 661 F.2d 1031 (5th Cir. 1981).

It is well-settled that the employer must show the availability of actual, not theoretical, employment opportunities by identifying specific jobs available for the claimant in his geographic area. *Royce v. Erich Constr. Co.*, 17 BRBS 157 (1985). For job opportunities to be realistic, the employer must establish the precise nature and terms of each job, *Manigault v. Stevens Shipping Co.*, 22 BRBS 332, 334 (1989), and the pay scales for the alternate jobs. *Moore v. Newport News Shipbuilding & Dry Dock Co.*, 7 BRBS 1024 (1978). The employer must produce evidence of realistically available job opportunities within the claimant's local community which he is capable of performing, considering his age, education, work experience, and physical restrictions. *Trans-State Dredging v. Benefits Review Bd.*, 731 F.2d 199 (4th Cir. 1984).

In *Universal Maritime Corp. v. Moore*, the United States Court of Appeals for the Fourth Circuit held that an employer meets its burden by "demonstrating the availability of specific jobs in a local market and by relying on standard occupational descriptions to fill out the qualifications for performing such jobs." *Moore*, 126 F.3d at 265. The court explained that the burden imposed is parallel to that required by other compensation schemes which rely on standard occupational descriptions, including those provided in the Dictionary of Occupational Titles. *Id*.

Finally, when referencing the external labor market through a labor market survey, an employer must "present evidence that a range of jobs exists which is reasonably available and which the employee is realistically able to secure and perform." *Lentz v. Cottman Co.*, 852 F.2d 129, 131 (4th Cir. 1988). According to the Fourth Circuit, "[i]f a vocational expert is able to identify and locate only one employment position, it is manifestly unreasonable to conclude that an individual would be able to seek out and, more importantly, secure that specific job." *Id*. The purpose of the labor market survey is not to find the claimant a job, but to determine whether suitable work is available for which the claimant could realistically compete. *Tann*, 841 F.2d at 543. Thus, the employer may meet its burden of showing the availability of suitable alternative employment by "presenting evidence of jobs which, although no longer open, when located were available during the time the claimant was able to work." *Id*.

In the present case, Ms. Barbara Harvey conducted a labor market survey on behalf of Employer (CX 7). The labor market survey contained descriptions for nine jobs in the fields of customer service, manufacturing, and unarmed security (*Id*.). The jobs listed in the labor market survey are all entry-level positions requiring little or no experience or advanced education (EX 7; Chart at Discussion section I(E), *supra*). The labor market survey also listed the hours and pay scales for the alternative jobs (EX 7). The information collected in the survey supports the conclusion that the jobs were available during the period of Claimant's claimed disability (*Id*.). In addition, the evidence supports the conclusion that most of the jobs identified in the survey are within Claimant's geographic area.[4] Furthermore, with the exception of the unarmed security guard position, Claimant's treating physician Dr. Stiles approved the jobs listed in the labor market survey (EX 7).[5]

DeMark opined to the contrary. He stated that none of the jobs in the labor market survey are suitable by virtue of Claimant's physical limitations alone. According to DeMark, every job in the labor market survey should be classified as at least a light-duty position, while Claimant's restrictions prevent him from working in any position that is not sedentary. DeMark dismissed Dr. Stiles' approval of the jobs in the labor market survey, explaining that he felt that the job descriptions approved by Dr. Stiles were inaccurate. He provided no specific evidence to substantiate his allegation that the job descriptions contained in the labor market survey are inaccurate.

[4] Dr. Stiles instructed Claimant to restrict his driving to only 30-40 miles per day because of drowsiness due to Claimant's medications (EX 1 at (r)). The temporary restrictions form signed by Dr. Stiles on July 14, 2003 indicated that Claimant should limit his driving to 40-50 miles per day (CX 5-9). To honor this driving restriction imposed by Claimant's treating physician, I will disregard any alternative jobs submitted by Employer which are demonstrated to be more than 20-25 miles from Claimant's residence.

[5] At the hearing, Employer's counsel stated that Employer no longer relies on the unarmed security guard position. Thus, I will not consider the position.

DeMark also testified that Claimant would be unable to secure a job because of "quiet" age discrimination and competition from younger, more experienced job seekers (Tr. 58). He provided no evidence to support this allegation.[6]

I credit Employer's evidence of suitable alternative employment over the nay saying opinion of Charles DeMark. DeMark's opinion regarding the accuracy of the job descriptions in the labor market survey is unsupported. His opinion regarding age discrimination in the job market is likewise unsupported. Finally, his opinion that Claimant is totally disabled is directly contradicted by the opinion of Claimant's treating physician.

Dr. Charles J. Sawyer III, Claimant's family physician, opined that Claimant could not work eight–hour days and that Claimant's physical abilities were very limited in all respects (CX 4). The record does not contain any evidence from which I can determine Dr. Sawyer's qualifications. However, I find that his opinion does not contradict Dr. Stiles' opinion regarding Claimant's ability to work within his restrictions.

On September 11, 2003, Dr. Samuel Brown completed an independent medical evaluation of Claimant's condition. In his written report, Dr. Brown opined that "[Claimant] certainly would be able to do some forms of more moderate work that does not involve prolonged standing, walking, climbing, or squatting" (EX 2). While Dr. Brown's qualifications are not known, Dr. Brown's opinion supports the conclusion reached by Dr. Stiles.

Based on the information contained in the labor market survey and Dr. Stiles' approval of the jobs contained therein, I find that Employer has satisfied its burden of establishing the availability of suitable jobs which Claimant is capable of performing and could compete for if he diligently tried.

C. Diligence

Employer has established that suitable alternative employment exists. Thus, Claimant may demonstrate that he is totally disabled only if he proves that he reasonably and diligently sought employment but was unable to secure a job. *See Tann*, 841 F.2d at 542. If Claimant cannot prove that he reasonably and diligently sought employment, he will be deemed not to be totally disabled.

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[6] The only evidence of record relevant to this issue is a newspaper clipping allegedly sent by DeMark to Claimant's counsel which actually contradicts DeMark's assessment of the job search success of older job seekers (CX 3). The article states that older workers are fairing "best" in the labor market (CX 3; Tr. 58). DeMark distinguished his assertion from the contrary information in the newspaper article with the qualifier that, in his opinion, "skilled" and "non-handicapped" older workers fare better, but Claimant's physical restrictions remove him from those categories of job seekers. This distinction advocated by DeMark is not supported by any evidence.

It is clear that there are suitable jobs available to Claimant within his geographic area, but Claimant has never followed up on any job leads and has not looked for work since July of 2003. Claimant testified that he carried out a job search, but his job search consisted solely of looking in the newspaper classified ads and dropping off applications with some of the employers listed in the labor market survey. He did not apply for a single job outside of the job leads sent to him by Employer. This minimalist approach to the job search does not demonstrate diligence. In fact, it suggests precisely the opposite of diligence. Employer has shown that work was available to Claimant, but Claimant has not shown any genuine effort to obtain employment.

Claimant has established that he cannot return to his pre-injury shipyard employment. However, Employer has rebutted Claimant's *prima facie* evidence of total disability by establishing that suitable alternative employment is available to Claimant outside the shipyard. Claimant has not been diligent in seeking alternative employment. Therefore, I find that he is not totally disabled. Thus, he is limited to an award for permanent partial disability under the schedule.

III. What is the extent of Claimant's partial disability?

Because Claimant has not shown that he is totally disabled, he is limited to an award of permanent partial disability under section 8(c)(2) of the Act. 33 USC 908(c). The record contains two medical opinions regarding Claimant's disability rating: (1) Dr. Stiles, Claimant's treating physician rated Claimant's impairment as "a 20 percent permanent impairment of his right lower extremity" (EX 1 at (t)); and (2) Dr. James V. Luck, Jr., Employer's medical expert, opined that Claimant's impairment is only two percent permanent impairment of his lower extremity (EX 8 at (b)).

Dr. Luck, an orthopaedic surgeon, reviewed Claimant's medical records and opined that:

> "The 15-degree flexion contracture mentioned by Dr. Stiles in his report is not borne out by the physical therapy evaluations, which indicate a range of 3-103 degrees on October 25, 2002. Therefore, the most appropriate rating at this point would be for a partial medial medial meniscectomy, which would be 2% lower extremity or 1% whole person. In addition, if the patient has significant restriction in range of motion, that might be ratable also. For example, flexion of less than 110 degrees warrants a rating of 4% whole person or 10% lower extremity. This would need to be documented by a current physical therapy or orthopaedic evaluation. Dr. Brown, in his evaluation, did not indicate the range of motion."

(EX 8 at (b)). Dr. Luck did not physically examine Claimant, but I am nonetheless persuaded that his opinion of Claimant's impairment rating is credible. Dr. Luck is well-qualified to offer an opinion regarding the proper impairment rating based only on a

review of Claimant's medical records (EX 9). Not only is Dr. Luck an orthopedic surgeon, he is also the author of the lower extremity chapter of the AMA Guides (*Id*.).

Dr. Stiles occupies a unique position as Claimant's treating physician in which he is well situated to evaluate Claimant's subjective complaints of pain. I find Dr. Stiles' opinion regarding Claimant's injury to be generally credible. However, I find that his opinion regarding the extent of Claimant's impairment is not well reasoned. Instead, I credit Dr. Luck's opinion that Claimant's relatively minor loss of range of motion and flexion does not support a 20 percent impairment rating. Dr. Luck's opinion that Claimant's impairment is 2 percent is well-reasoned and supported by the objective evidence from Claimant's physical therapy treatments (CX 5 at 15). Thus, I will order that Employer pay Claimant for a 2 percent permanent partial impairment pursuant to section 8(c)(2) of the Act.

ORDER

It is hereby ORDERED that:

1. Claimant's request for permanent total disability after September 14, 2003, is DENIED.

2. Employer shall pay Claimant a total of $3,084.71, representing 5.76 weeks (2% of 288 weeks) of permanent partial disability compensation at a rate of $535.54 per week.

3. Within twenty (20) days of receipt of this order, Claimant's attorney shall submit a fully documented fee petition, a copy of which shall be sent to opposing counsel, who shall then have ten (10) days to respond with objections thereto.

A

LARRY W. PRICE
Administrative Law Judge

LWP